

Members:
Rep. Mark Kruzan, Chair
Rep. John Frenz
Rep. Dale Sturtz
Rep. Luther Lutz
Rep. Richard Mangus
Rep. Thomas Saunders
Sen. James Merritt, V. Chair
Sen. Allen Paul
Sen. Becky Skillman
Sen. William Alexa
Sen. James Lewis
Sen. Timothy Lanane



INTERIM STUDY COMMITTEE ON STATE GOVERNMENT ISSUES

LSA Staff:
John Rowings, Attorney for the Committee
Anne Haley, Attorney for the Committee
Susan Preble, Fiscal Analyst for the Committee

Authority: Legislative Council Resolution 2-1998

**Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 232-9588 Fax: (317) 232-2554**

MEETING MINUTES

Meeting Date: October 20, 1998
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington St.,
House Chambers
Meeting City: Indianapolis, Indiana
Meeting Number: 6

Members Present: Rep. Mark Kruzan, Chairperson; Rep. John Frenz; Rep. Dale Sturtz; Rep. Luther Lutz; Rep. Richard Mangus; Rep. Thomas Saunders; Sen. James Merritt, Vice-Chairperson; Sen. Allen Paul; Sen. Becky Skillman; Sen. William Alexa; Sen. James Lewis; Sen. Timothy Lanane.

Members Absent: None.

The meeting convened at 1:55 p.m. Rep. Kruzan announced that the Committee would be discussing the preliminary drafts of legislation prepared for the Committee. He explained that if these preliminary drafts are approved by the Committee, they will not yet be laws, but will instead be recommendations to the legislature that may become law if approved by the legislature.

Preliminary Draft 3481

Preliminary Draft 3481 creates a statutory Public Access Counselor.¹ Rep.

¹A copy of Preliminary Draft 3481 is on file at the Legislative Information Center, Room 230, State House, Indianapolis, Indiana. the telephone number of the Legislative Information Center is (317) 232-9856, and the mailing address is 200 West Washington St., Suite 301, Indianapolis,

Kruzan indicated that PD 3481, in addition to creating a statutory Public Access Counselor, puts "teeth" in the public access litigation provisions. The new litigation provisions are as follows: (1) Requires a court to award attorney's fees to a successful plaintiff. (2) Requires a court to expedite a public access lawsuit. (3) Provides that a court may assess a civil penalty against a public agency for up to \$1000 if the agency violates the public access laws without a reasonable basis in law. The penalties are deposited in an account and used to fund public access educational programs. Rep. Kruzan suggested the following amendments to the draft: (1) Clarify whether the period for filing an action under IC 5-14-1.5 (the open door law) is tolled while a person files for an opinion from the Public Access Counselor. (2) Prohibit the Public Access Counselor from issuing an opinion on a matter that is in litigation. The Committee discussed whether the penalty should be assessed against the agency or the public official who violated the law. The Committee questioned how the penalty would be paid if it was assessed against a public agency.

The Committee discussed the cost of creating a statutory Public Access Counselor. Ms. Susan Preble, Fiscal Analyst for the Committee, Legislative Services Agency, indicated that the cost is currently indeterminable. However, the budget figures for the Commission on Public Records indicate that the cost of the current Public Access Counselor is \$115,000 per year. Rep. Mangus suggested "sunsetting" the office--making the office expire after a specified period of time unless renewed by the legislature. Sen. Merritt stated that he is opposed to the idea of the Public Access Counselor assessing fines for noncompliance. He suggested establishing a statutory Public Access Counselor and educational programs this year, and reexamining the issue next year aided by the Counselor's experience. Rep. Sturtz stated that the situation will be the same as it is now if the Committee postpones acting on the issue for a year.

Sen. Alexa stated that he would prefer having the Public Access Counselor issue binding opinions and assessing fines against violators. He pointed out that Preliminary Draft 3481 still requires a citizen to bear the cost of going to court. Sen. Alexa indicated, however, that this Preliminary Draft is a reasonable compromise. Rep. Kruzan expressed his opposition to the Public Access Counselor, a political appointee, issuing fines.

The Committee discussed whether a penalty assessed against a public official would be covered by a bond. Sen. Alexa pointed out that not all officials are bonded. Rep. Lutz expressed concern about creating more bureaucracy with the addition of a Public Access Counselor. He suggested shifting this function to an existing agency such as the Attorney General's office. Sen. Alexa stated that it would be a conflict of interest for the Public Access Counselor to be a part of the Attorney General's office since the Attorney General represents state agencies. Sen. Skillman stated that she supports creating a statutory Public Access Counselor. She stated that the title "counselor" leads citizens and public agencies to believe that this official "counsels", which is incompatible with issuing fines. She supports the concept of a commission that can issue fines, but does not support creating a commission at this time. Sen. Lanane pointed out that when an agency fails to follow the law it will receive bad press

Indiana 46204-2789. This draft replaces Preliminary Draft 3424 which was discussed at the Committee meeting on October 6, 1998.

which is also a deterrent. Because of the disagreement on whether to allow a court to assess a penalty against a public agency or an individual, the Committee voted unanimously to amend Preliminary Draft 3481 to remove the words "against the public agency" at page 3, line 8 and at page 4, line 46. The purpose of the amendment was to give a court the option to assess a penalty against either the public agency or an individual.

Ms. Dorothy Alabach objected to adding layers of bureaucracy to Indiana government and said that the Committee should take steps to provide citizens with constitutional equal rights protection. On the issue of fines, she stated that the Committee should not make the people appealing for the Committee's help to become "taxpayer victims". She stated that the fines that the Indiana Department of Environmental Management may assess are a fraud. She addressed other issues such as "strategic lawsuits against public participation" (SLAPP) and Indiana's wrongful death statute. She encouraged prosecution of those who abuse the public trust and stated that what is needed is constitutional monitoring of government action to avoid control of Indiana government by the top twelve law firms in the state.

Mr. Jeff Symmes addressed the question of a person committing a violation of the public records act in order to cover up a crime.

The Committee voted to recommend Preliminary Draft 3481 to the General Assembly as amended by a unanimous vote of all members present.

Preliminary Draft 3397

Under current law, IC 5-14-3-8(d) provides that a public agency that is not a state agency may establish a fee schedule for certifying, copying, or facsimile transmission of documents that does not exceed the "actual cost" of certifying, copying or facsimile transmission of a document. Preliminary Draft 3397 specifies that overhead costs, labor costs, and profit are not included in "actual cost".² Mr. Charles Hiltunen, Indiana Land Title Association addressed the Committee concerning an amendment proposed by Sen. Merritt. Mr. Hiltunen discussed how under IC 5-14-3-3(e), a governmental entity currently has the option to prescribe the conditions under which a person who receives information on disk or tape may or may not use the information for commercial purposes. However, the statute creates certain exceptions for the use of information in the preparation or publication of news, for nonprofit activities, or for academic research. The proposed amendment would add to this list of exceptions "the preparation of a real estate transaction or financing." Under this proposal, a governmental unit would no longer have the power to set conditions on the commercial use of information obtained on disk or tape when that information is to be used with respect to a real estate transaction or financing. The Committee adopted the amendment by a unanimous vote of all members present.

Mr. Hiltunen stated that he also would like land title associations to pay the actual cost of copies rather than the statutory fee charged by the county recorder's office.

Mr. Clarke Kahlo, FOIndiana, stated that he supports the Preliminary Draft. He stated that the current state rate for copies is fifteen cents. He pointed out the current commercial rate for copies is three, five, or seven cents a page. He urged the

²Preliminary Draft 3397 is on file at the Legislative Information Center. (See footnote 1).

Committee to look at these rates. Rep. Kruzan pointed out that under Preliminary Draft 3481 the Public Access Counselor can make a recommendation concerning copy costs to the General Assembly.

Sen. Lewis indicated that some counties in his district could operate easily if labor, overhead and profit are excluded from actual cost, however, other offices could not operate. Rep. Kruzan stated that he objects to local units using fees to fund services instead of property taxes. He stated that taxpayers have already paid for overhead and labor with their taxes and should not be required to pay for them again. Sen. Lewis proposed an amendment that would add overhead costs and labor costs into actual cost. The amendment was rejected, with five members voting to adopt the amendment and six voting against the amendment. Preliminary Draft 3397 was approved by nine affirmative votes of the Committee.

Preliminary Draft 3534

The Committee briefly discussed Preliminary Draft 3534 which requires state agencies to provide electronic access to notices of public meetings and invitations to bid on contracts for public works and supplies.³ Rep. Kruzan indicated that the Governor recently issued an Executive Order calling for this to be done administratively. Preliminary Draft 3534 was approved unanimously by all members present.

Preliminary Draft 3270

Preliminary Draft 3270 eliminates the requirement for filing a petition by registered voters before adoption of an ordinance establishing a utility service board. The Preliminary Draft also eliminates the requirement for filing a petition by registered voters before the adoption of an ordinance changing a town into a city.⁴ The Committee members present voted unanimously to recommend Preliminary Draft 3270 to the General Assembly.

Proposal to create a Department of Indiana Heritage

The Committee discussed the proposal to create a Department of Indiana Heritage. This proposal would involve bringing the seven existing historical agencies into a single department. Sen. Merritt discussed how the department would foster the preservation of Indiana heritage and history. He indicated that he drafted a bill last year, but did not pursue it because he wanted the issue to receive thoughtful consideration. He asked the Committee to recommend the concept of the creation of a Department of Indiana Heritage to the General Assembly. The Committee members present voted unanimously to recommend the concept.

³ Preliminary Draft 3534 is on file at the Legislative Information Center (See footnote 1). This draft replaces Preliminary Draft 3398 which was discussed at the October 6, 1998 meeting of the Committee.

⁴Preliminary Draft 3270 is on file at the Legislative Information Center (See footnote 1).

Preliminary Draft 3532

The Committee discussed Preliminary Draft 3532 which contains various provisions concerning the public access laws.⁵ The Committee announced they would take public testimony on the draft.

Ms. Katherine Azhar stated her objections to IC 5-14-3-4(b)(6) in the current law that exempts "intragency or interagency advisory or deliberative material" from the records that must be disclosed to the public. She pointed out that the definition of "official business" in IC 5-14-1.5-2 of the open door law includes "to deliberate".

Ms. Wendy Brant pointed out the discrepancy in the current wording of IC 5-14-3-2 that prevents records constituting the "work product of an attorney" from being accessible to the public and the wording of IC 5-14-1.5-6.1 which permits public agencies to meet in executive session to discuss litigation that is pending or threatened. She encouraged the Committee to resolve this discrepancy and said that she preferred the language in the open door law.

Mr. Clarke Kahlo, FOIndiana, stated that he agrees with Ms. Katherine Azhar concerning deliberative material.

Ms. Charlene Bredemeier suggested that the new language on page 8 of the draft which requires agencies to make records available in an "expeditious manner", should be replaced with making the records available "without delay". She suggested making an exception to this requirement for a volume request of records. She testified that Indiana agencies need to name a custodian of records as is the practice in other states. She stated that the law should make a distinction between records that are readily available at the agency and those that are in storage. She recommended the concepts contained in the draft, but stated that she will continue to work with others on it.

Mr. Steve Key, Hoosier State Press Association, explained the amendment on page 16, lines 15 through 34 of the draft, concerning the release of information concerning emergency ambulance services provided by or under contract with an entity that is a public agency. Mr. Key stated that the purpose in wanting this information is to determine if the ambulance services that are contracted for are being provided. Sen. Skillman asked if this means that disclosure requirements will be different for those emergency ambulance service providers who serve private hospitals than those who serve state hospitals. Mr. Key stated that only those records that private hospitals are required to provide to the state would be accessible. He stated that medical records would still be private, the disclosable information pertains to the ambulance service provided.

Mr. Bill Nangle, The Times of Northwest Indiana, explained that some small entities do not have their own ambulance service, so they are required to hire a private company to provide a public service. He stated that the public wants to know whether the private service is performing in accordance with the contract. He said this provision would affect private entities that contract with public hospitals.

Rep. Lutz asked whether an ambulance service for which the municipality charges a user fee would be subject to the provision. Mr. Key indicated that the service would still be a public entity and would be subject to the law.

Rep. Sturtz asked about the provision on page 17 of the draft, which requires a coroner to release certain information even though a report has not yet been prepared. Mr. Key explained the origin of the provision. Rep. Sturtz stated that the deceased's family

⁵Preliminary Draft 3532 is on file at the Legislative Information Center. (See footnote 1). This draft replaces Preliminary Draft 3396 which was discussed by the Committee at the October 6, 1998 meeting of the Committee.

members need to be considered in deciding whether this information should be released. Rep. Saunders asked whether the coroner withholds information in order to aid the police investigation. Mr. Key said that it is usually the first hours of an investigation that is important, not days after the investigation begins.

Ms. Michelle Terrell, reporter, testified that releasing information regarding ambulance runs could help newspapers report information correctly. She stated that how the police officer at the scene reports the condition of a person who has been in an accident is often quite different than how the hospital personnel report it.

Rep. Kruzan suggested amending the Preliminary Draft to remove the provision concerning county coroners because the provision raises certain privacy concerns. The Committee members present voted unanimously to remove the coroner's provision from the draft.

Rep. Mangus stated that he strongly objects to the provision on page 3, line 28-46 of the draft that would allow some members to attend a meeting by teleconferencing. Mr. Steve Key, stated that the provision does not allow all members to attend a meeting by teleconference. Rep. Kruzan pointed out that under the provision, a quorum of members must be present at the meeting before a member may attend by teleconferencing. Mr. Key stated that some entities, such as the Indiana Bond Bank, are already permitted by statute to conduct meetings in this way, while other entities are doing this without any statutory authority. The Committee members present voted unanimously to remove this provision from Preliminary Draft 3532.

Rep. Kruzan said that Preliminary Draft 3532 needs further work. He stated however, that the Committee could vote on the concept of the draft. The Committee members present voted unanimously to recommend the concept of Preliminary Draft 3532 to the General Assembly and not the draft itself. The Committee members present voted unanimously to adopt the draft of the Committee's final report.⁶ Rep. Kruzan adjourned the meeting at 4:00 p.m..

⁶ A copy of a draft of the final report is on file at the Legislative Information Center (See footnote 1).